

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LOCAL AD LINK, INC., et al.,)	Case No.: 2:09-cv-01564-GMN-LRL
)	
Plaintiffs,)	ORDER
vs.)	
)	
ADZZOO, LLC, et al.,)	
)	
Defendants.)	
)	

Before the Court is Defendants/Counter Claimants Adzzoo, LLC, et al.'s ("Adzzoo") Motion for Judgment on the Pleadings (ECF No. 90). Plaintiff/Counter Defendant Local Ad Link, Inc., et al. ("Local Ad Link") filed a Response (ECF No. 96) and Adzzoo filed a Reply (ECF No. 98).

Also before the Court, is Adzzoo's Motion to Dismiss (ECF No. 91). Local Ad Link filed a Response (ECF No. 95) and Adzzoo filed a Reply (ECF No. 97).

Local Ad Link filed this lawsuit in state court and Adzzoo removed it to federal court on August 19, 2009. (ECF No. 1.) After a motion to dismiss was addressed, Adzzoo filed its Answer as well as Counterclaims and a Third Party Complaint on February 19, 2010 (ECF No. 39). When the Answer was filed, a deadline for filing the Discovery Plan/Scheduling Order was provided - April 5, 2010. (*See* ECF No. 39.) However, prior to this deadline, Local Ad Link submitted a Motion to Withdraw Attorney on March 5, 2010 (ECF No. 43), which was granted on March 15, 2010 (ECF No. 46). The Magistrate Judge ordered that new counsel must be retained, or a memorandum explaining why new counsel has not been retained was required to be submitted, by April 12, 2010. (*See* ECF No. 46.) The deadline date given to address the issue of new counsel was one week after the discovery plan deadline. A new Discovery

1 Plan/Scheduling Order deadline was never given nor did the parties ever request one. A few
2 weeks later, Defendant Adzzoo filed its first Motion to Dismiss Plaintiffs' Complaint for lack of
3 prosecution on April 28, 2010 (ECF No. 58) as well as a Motion for Entry of Default on its
4 counterclaims (ECF No. 59). These two motions were denied on September 9, 2010. (*See* ECF
5 No. 88.)

6 Adzzoo has filed the instant motion to dismiss for lack of prosecution because Local Ad
7 Link has failed to schedule a Rule 26(f) scheduling conference or file any other required
8 motions to prosecute its case. According to Local Rule 41-1, the court can dismiss the action for
9 want of prosecution if the action has been pending for more than nine months without any
10 proceedings of record. In this case, it does not appear that Local Ad Link filed the case and then
11 had simply forgotten about it. While it does appear that Plaintiff has failed to take all
12 appropriate steps necessary to prosecute its case, Local Ad Link has filed some recent motions
13 in this case. The court will therefore deny Defendants' motion.

14 However, in the Court's Order dated September 9, 2010, (*See* ECF No. 88.), this Court
15 ordered that as a result of the Plaintiffs' failure to file an answer to Defendants' counterclaims,
16 the facts alleged in the counterclaims would be deemed admitted as a matter of law. *Id.* More
17 than five months later and well after the deadline to file an answer had passed; Plaintiff filed an
18 untimely Answer (ECF No. 94) to the counterclaims on February 23, 2011. Plaintiff never
19 asked for leave to file its late answer. Accordingly, the Court hereby orders that the Plaintiff's
20 Answer (ECF No. 94) to Defendants' Counterclaims be stricken.

21 The Court further DENIES Adzzoo's Motion for Judgment on the Pleadings. Instead, the
22 Court will Order that the Clerk of Court enter a Clerk's Default on Adzzoo's Counterclaims
23 against Local Ad Link and in favor of Adzzoo. Adzzoo is further ordered to submit for the
24 Court's review a Motion for Default Judgment addressing the *Eitel* factors. *See Eitel v. McCool*,
25 782 F.2d 1470 (9th Cir. 1986). Adzzoo may file a Proposed Order leaving blank the amount of

1 damages which will be determined by the court upon presentment of documentary evidence of
2 damages and other matters requiring proof.

3 Finally, neither party has complied with the Discovery Plan/Scheduling Order deadline to
4 submit their plans by April 5, 2010. Accordingly, this Court refers this matter to the Magistrate
5 Judge to determine what, if any, sanctions are appropriate for failing to comply with the court's
6 deadline.

7 **IT IS HEREBY ORDERED** that Local Ad Link's Answer (ECF No. 94) is **STRICKEN**.

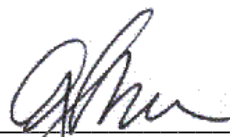
8 **IT IS FURTHER ORDERED** that Adzzoo's Motion for Judgment on the Pleadings
9 (ECF No. 90) is **DENIED**.

10 **IT IS FURTHER ORDERED** that the Clerk's Office enter a Clerk's Default on
11 Adzzoo's Counterclaims in favor of Adzzoo.

12 **IT IS FURTHER ORDERED** that Adzzoo file a Motion for Default Judgment.

13 **IT IS FURTHER ORDERED** that Adzzoo's Motion to Dismiss (ECF No. 91) is
14 **DENIED**.

15 DATED this 23rd day of September, 2011.

16
17 
18 _____
19 Gloria M. Navarro
20 United States District Judge
21
22
23
24
25